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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,128	12/17/2001	Durward I. Faries, JR.	1322.0040C	4172
7590	05/04/2006			EXAMINER WITCZAK, CATHERINE
EPSTEIN, EDELL, SHAPIRO, FINNAN & LYTLE, LLC Suite 400 1901 Research Boulevard Rockville, MD 20850-3164			ART UNIT 3767	PAPER NUMBER

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/016,128	FARIES, ET AL.
	Examiner	Art Unit
	Catherine N. Witczak	3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 April 2006.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 17-23 and 51-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 17-23 and 51-62 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/15/2006</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 17, 18, 19, 23, 51, 52, 53, 56, 57, 59, and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gonzalez (US 3,293,868) as modified by Shah et al (US 4,532,414) and Augustine et al (US 6,464,666).

Claims 17, 18, 19, 51, 52, 53, 57, and 59: Gonzalez discloses in Figure 3 a fluid warming device comprising a plurality of spiral concentric sections with fluid flow direction being opposite the flow direction of the adjacent section, the fluid line tubing further including inlet and outlet terminals (31) extending tangentially from the annular section.

Gonzalez discloses the claimed invention except for the quantity of tubing used being based on providing a residence time for enabling the device to heat the fluid to a temperature in the range of 60° to 160° F. Shah et al disclose that it is known to vary the quantity of tubing used in order to provide a residence time for enabling the device to heat the fluid to a temperature in the range of 60° to 160° F (column 5, lines 10-17). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Gonzalez, by varying the quantity of tubing used in order control the residence time for a said fluid as taught by Shah et al, since such a modification would allow the system to heat the fluid to a temperature in the range of 60° to 160° F.

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Gonzalez discloses the claimed invention except for the inlet and outlet terminals including a connector for connection to portion of an IV fluid line. Augustine et al disclose in Figure 3a that it is known to use a connector (50) for connection to portions of IV fluid lines to vent gases escaping from the fluid (column 5, lines 40-49). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Gonzalez, by including a connector fluid connecting the terminals with a portion of an IV fluid line as taught by Augustine et al, since such a modification would provide a connector for venting gases escaping from the fluid

Claims 23, 56, and 62: Gonzalez discloses in Figure 6 the fluid cassette comprising an engagement member to facilitate manipulation, insertion and removal of the cassette (29 and 30).

2. Claims 20, 54, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gonzalez as modified by Shah et al and Augustine et al as applied to claims 17, 51, and 57 above, and further in view of Augustine et al (US 2001/0009610).

Gonzalez as modified by Shah et al and Augustine et al ('666) discloses the claimed invention except for a conductive contact detectable by the warming device to indicate the presence of the cassette. Augustine et al teach that it is known to use a conductive contact detectable by the warming device to indicate the presence of the cassette in paragraphs 0028 and 0029. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the system as taught by Gonzalez as modified by Shah et al and Augustine et al ('666) with a conductive contact detectable by the warming device to indicate the presence of the cassette as taught by Augustine et al ('610), since such a modification would provide an on/off switch for using the warming device.

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3. Claims 21, 22, 55, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gonzalez as modified by Shah et al and Augustine et al above, in further view of Ford et al (US 5,245,693).

Gonzalez discloses the claimed invention except for a fitting receiving a temperature sensor to measure the fluid temperature including a thermally conductive member disposed in the fitting. Ford et al disclose a fitting (170) receiving a temperature sensor (130) to measure the fluid temperature include a thermally conductive member disposed in the fitting in column 8, lines 4-10. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teaching of Ford et al in the cassette of Gonzalez in order to facilitate heating control of the heat exchanger.

*Response to Arguments*

Applicant's arguments with respect to claims 17-23 and 51-62 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine N. Witczak whose telephone number is (571) 272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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KEVIN SIRMONS  
PRIMARY EXAMINER

